

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION



PAUL R. LEPAGE
GOVERNOR

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ACTING COMMISSIONER

TO: Maine Board of Environmental Protection

FROM: George Seel, Bureau of Remediation & Waste Mgmt.

DATE: September 20, 2011

RE: Post to Public Hearing: Proposed Amendments to Chapter 692, Siting Of Oil Storage Facilities

Statutory Authority and Basis:

Chapter 692 was originally adopted by the Board in 2010 as authorized by An Act to Prevent Contamination of Drinking Water Supplies enacted by the Legislature in 2008 (P.L. 2008, c.569, §7). P.L. 2011, Chapter 26, a legislative resolve enacted this past session requires the Department and the Office of State Fire Marshal in the Department of Public Safety to establish a single permit by rule for the installation of a small above ground diesel fuel storage facility associated with aggregate mining operations. To accomplish this goal, we are proposing for your consideration amendments to Chapter 692 which would establish a limited, conditional permit by rule for above ground diesel storage on significant sand and gravel aquifers mapped by the Maine Geologic Survey. Concurrently, the State Fire Marshal's Office is initiating administrative changes in their permitting program toward this same goal.

Purpose of the Rule Amendment:

The primary purpose for this rulemaking is to allow for the storage of a small quantity of diesel fuel for fueling heavy equipment used in the mining of sand and gravel from pits located in significant sand and gravel aquifers mapped by the Maine Geological Survey and currently protected for future use as the source of water for public drinking water supplies, without substantially increasing the risk of oil contamination of ground water. A secondary reason is to exempt proposed new oil storage facilities on a site erroneously mapped as a significant sand and gravel aquifer, and urban locations where ground water has already been contaminated beyond use as drinking water, rather than require a variance application as is currently the case.

Key Issues:

The key issue surrounding this rulemaking is balancing and managing the risk of discharges of oil to Maine's most significant ground water aquifers and the consequences of those discharges that will occur, and still meeting the sand and gravel mining industry's need for diesel fuel for their heavy equipment. The proposed rule

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allows limited diesel fuel storage without a site-specific permit or variance review, but with safeguards to prevent tank leaks and spills related to the filling of the tank or vehicles, and to detect those that do occur early enough such that they should not reach and contaminate ground water. Overall, this rule may slightly reduce the risk of ground water contamination, or is at least risk neutral, by providing an alternative to the industry's current practice of fueling heavy equipment from peddle trucks (fuel oil trucks) with their inherent vehicle fueling spills and general lack of safeguards.

Rule Development Process:

In accordance with Chapter 692's original legislative authority, this rule-making is major substantive. Upon provisional adoption by the Board, the rule must still go to the Legislature for their consideration. We are attempting to complete the rulemaking process such that the provisional rule can be sent to the Legislature in January, 2012.

The rule was developed based on discussions between staff from the Department's Bureaus of Land and Water Quality Control and Remediation and Waste Management, and the Maine Aggregate Association in early 2011 and late 2010. Staff from the State Fire Marshal's Office has also participated. The technical aspects of the rule were developed with benefit from our in-house expertise and experience in safe petroleum storage systems (both above ground and underground) and advice from the State Fire Marshal's Office, along with our extensive experience in the remediation of petroleum contaminated soil and ground water, including sand and gravel aquifers.

On August 1, 2011, a discussion draft was distributed to interested parties including members of the aggregate mining industry, the Maine Energy Marketers Association, environmental groups, large and small public water utilities, and others. On September 9, 2011, the Department hosted a meeting among interested parties. Attending were representatives from the Maine Aggregate Association, the Maine Water Utilities Association, Maine Municipal Association, and the Maine Drinking Water Program. Written comments were also provided by Aqua Maine, Inc., a commercial water utility. Based on input received from the above efforts, the draft was revised to result in the proposal before you for posting to public hearing.

Recommendations:

The Department recommends that the Board post the attached proposed amendments to Chapter 692 to public hearing in accordance with the Maine Administrative Procedures Act. We recommend the hearing be held on November 3, 2011 followed by a written comment period ending on November 14, 2011.